

REMARKS

This is in response to the Office Action mailed on May 28, 2008. Claims 1-21, 23-38 and 61 are pending; claims 33-36 are allowed; claims 1-21, 23-32, 37, 38 and 61 are withdrawn. Claims 1, 37, 38, and 61 have been amended. Support for the amendments can be found in the specification and claims as originally filed and in particular paragraph 0078. In light of the arguments and comments below, reconsideration and allowance of the present application are respectfully requested.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1-21, 23-29 and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rosenberg, U.S. Patent No. 4,538,618 ("Rosenberg") in view of Rosen et al., U.S. Patent No. 4,228,805 ("Rosen"). Claims 30, 37 and 61 are rejected under 35 U.S.C. §103(a) as being unpatentable over Rosenberg in view of Rosen and further in view of Riccitelli et al., U.S. Patent No. 5,166,990 ("Riccitelli"). Claims 31 and 32 are rejected under 35 U.S.C. §103(a) as being unpatentable over Rosenberg in view of Rosen and further in view of Boggett et al., WO 98/20794 ("Boggett").

With regard to claims 1-21, 23-29 and 38 the Examiner states that Rosenberg discloses a blood flow sensor exposed on its longitudinal axis and is capable of contacting mucosal tissue, the flow sensor passing through a holder which has a passage therein through which the sensor passes and is flexible. In addition, states the Examiner, the device further includes a PCO2 sensor. The Examiner states Rosen shows a similar device to Rosenberg which determines the viability of tissue, which displays measurement values to alert the physician to the patient's status and thus it would have been obvious to modify Rosenberg to use such a display to provide more information as to the patient's condition. The Examiner states that claims 2-21 are rejected in that the device is capable of being positioned adjacent any of the mucosal surfaces recited and that with respect to claims 23-27 element 202 of Rosenberg is capable of being used to hold the sensor in position adjacent a mucosal surface and therefore meets the intended function of the positioning means. With respect to claims 28 and 29 the Examiner states the flow sensor of Rosenberg is laser-doppler or ultrasonic and that claim 38 is rejected because element 202 is at

least partially flexible.

Applicants have amended claims 1, 37, 38, and 61 to generally recite a sensor positioning element or sensor holder having an inner portion and an outer portion, the inner portion having a shape generally corresponding to the shape of the area of tissue to be measured and structured to engage and isolate the surface of the tissue. This unique sensor holder having a shape that generally corresponds to the shape of the area of tissue to be measured creates a microenvironment in the tissue which facilitates the measurement of gases such as PCO₂ and other parameters. Neither Rosenberg, Rosen, Riccitelli or Boggett alone or in combination teach, disclose, suggest or make obvious a sensor positioning element/sensor holder having an inner portion and an outer portion, said inner portion having a shape generally corresponding to the shape of the area of tissue to be measured and structured to engage the surface of the tissue.

Neither does Rosenberg, Rosen, Riccitelli or Boggett alone or in combination teach, disclose, suggest or make obvious the limitations in claims 2-21 or 22-32. If an independent claim is nonobvious then any claim depending therefrom is nonobvious. MPEP §2143.03.

Applicants submit that all pending claims are allowable over the art of record and respectfully request withdrawal of the rejection under §103(a) and allowance of all claims.

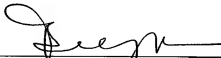
Conclusion

All rejections having been addressed Applicants respectfully request that a Notice of Allowance be issued in this case. In the event a telephone call would expedite the prosecution of this application, the Examiner may reach Barbara Wrigley at (612) 607-7595. Applicants hereby petition for a two-month extension of time, the statutory period for response having expired on

August 28, 2008 and this response being filed on or before October 28, 2008. The Commissioner is authorized to charge fees for any extension of time to Deposit Account No. 50-1901 (Reference 11242-320).

Dated: October 27, 2008

Respectfully submitted,



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